No. 229

In the Supreme Court of the United States

OCTOBER TERM, 1938

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

COLUMBIAN ENAMELING AND STAMPING COMPANY, INC.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

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OPINIONS BELOW

The findings of fact, conclusions of law, and order of the National Labor Relations Board (R. 372–293) are reported in 1 N. L. R. B. 181. The majority and dissenting opinions in the Circuit Court of Appeals (R. 415–425) are reported in 96 F. (2d) 948.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered on April 28, 1938 (R. 425). Petition for certiorari was filed on July 28, 1938, and was

granted on October 10, 1938 (R. 429). The jurisdiction of this Court rests upon Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1928, and Section 10 (e) of the National Labor Relations Act.

QUESTIONS PRESENTED

1. Whether, assuming that employees have gone on strike in violation of an agreement between them and their employer, the employer is thereby freed from his obligation under the National Labor Relations Act to bargain collectively with the representatives of his employees.

2. Whether such a strike terminates the strikers' status as employees within the meaning of the Act.

3. Whether the fact that such a strike was begun before the passage of the Act terminates the strikers' status as employees, or frees the employer from his duty to bargain collectively with their representative after the passage of the Act.

4. Whether the strike in this case did constitute a breach of the agreement between respondent and its employees.

STATUTE INVOLVED

The pertinent provisions of the National Labor Relations Act (Act of July 5, 1935, c. 372, 49 Stat. 449, U. S. C., Supp. III, Title 29, Sec. 151 *et seq.*) are set forth in Appendix A, *infra,* pp. 42–43.

STATEMENT

Pursuant to a charge (R. 5–7) duly filed by the Enameling and Stamping Mill Employees Union, No. 19694 (hereinafter referred to as the Union), a labor organization, the National Labor Relations Board, on November 21, 1935, issued a complaint and notice of hearing, which were duly served upon respondent (R. 7–10). In addition to jurisdictional allegations, the complaint alleged in substance that respondent had engaged in unfair labor practices affecting commerce within the meaning of Section 8 (1) and (5) of the Act (R. 8–10). On November 27, 1935, respondent filed an answer (R. 11–18), in which it denied the commission of the unfair labor practices. A hearing was held on December 9, 10, and 11, 1935, before a Trial Examiner duly designated by the Board (R. 19). Briefs were filed with the Board by respondent and the complainant Union. Thereafter, on February 14, 1936, the Board issued its findings of fact, conclusions of law, and order (R. 372–393). The facts, as found by the Board and as shown by the evidence, are as follows:

Respondent, an Indiana corporation with its plant at Terre Haute, Indiana, is engaged in the manufacture and sale of metal utensils and other products, and is extensively engaged in commerce among the States and with foreign nations (R. 375–376).

On July 14, 1934, respondent and the Union entered into a contract (R. 15–17), effective for

one year, but terminable by either party on thirty days' notice, which prescribed various conditions of employment and contained the following provision (R. 17):

> In any case in which satisfactory settlement of a dispute arising under this contract cannot be reached, such dispute shall be referred to a committee of arbitration composed of two persons selected by the Management, two persons selected by the Union, and a fifth person to be selected by these four, who shall reach a decision which shall be final and binding upon both parties to this contract. There shall be no stoppage of work by either party to this contract pending decision by the Committee of Arbitration.

Respondent met with the Union Scale Committee, which had been appointed by the Union to deal with the management (R. 377) at various times subsequent to July 14, 1934 (R. 377–379). On January 4, 1935, the Union submitted to respondent a number of demands: that it be recognized as the bargaining representative of all the employees, that the Union cooperate with respondent in correcting defects in workmanship and in enforcing respondent's rules, that respondent agree to lay off any member of the Union who was suspended from the Union, and that minimum wages be increased at the end of ninety days if by that time unrest had been eliminated and production

loss reduced to a normal minimum (R. 379, 382).[1] In a circular letter of January 21, sent to each employer individually, respondent rejected the proposals (R. 379). On February 5, the Union wrote respondent asking that the proposals of January 4 be submitted to arbitration pursuant to the provision of the agreement set forth, *supra*, p. 4 (R. 379). The proposals were discussed in a meeting with the Union on February 7, apparently to show that they were not disputes arising under the contract (R. 380–381). On February 8 respondent wrote the Union, and at the same time stated in a circular letter to the employees individually, that it refused to arbitrate on the ground that the proposals of January 4 were not arbitrable under the agreement (R. 381).

The Union subsequently presented other demands to respondent.[2] On March 11 the Union

[1] Contrary to the statement in the chronological summary of the facts by the court below (R. 416), these proposals did not include a demand for a closed shop. Such a demand had been made and withdrawn in 1934 (R. 378–379), but it was not renewed in 1935 until March 17 (R. 383). See *infra*, pp. 20–28.

[2] The Union claimed, on February 7 and March 5, that under Section 9 of the agreement (R. 16) employees were entitled to two hours' pay for waiting time after a breakdown (R. 379–380; see footnote 8, p. 24, *infra*). Respondent disagreed, and no arbitration was requested (R. 380). The Union also claimed, on February 9 and March 5, that respondent should stop sending circulars to the employees individually rather than communicating with their representatives (R. 381–382). Respondent agreed to allow the Scale Committee to read and object to the circulars before they were sent so that changes could be made wherever possible (R. 382).

renewed its demands of January 4, at a meeting with respondent's officials, but respondent merely reiterated its prior rejection of each proposal (R. 382). On March 17 the Union sent respondent a copy of resolutions adopted by it which declared that, whereas the Union had consistently adhered to every provision of the agreement, respondent had broken it by refusing to arbitrate the demands made by the Union, and by failing to live up to the provision for two hours' minimum pay (see footnote 2, p. 5, *supra*) (R. 383); that respondent had been deliberately seeking to injure the Union by attacking the integrity of its committee and thereby violating the principles of collective bargaining; and it was resolved that in the interests of peace and harmony the men would not continue to work with anyone eligible for Union membership who did not join the Union before March 23 (R. 383).

On March 23, 1935, a strike was called (R. 383). About 485 of respondent's 500 production employees were members of the Union at that time (R. 377), and approximately 450 left work, the Union allowing about 35 men in the power house to remain (R. 383). On March 30 respondent announced that the factory was closed indefinitely (R. 383).

Various attempts to settle the strike were futile (R. 383–385). Respondent insisted, despite the fact that the vast majority of its employees belonged to the Union, that it would reopen the fac-

tory only "as an open shop without union recognition or agreement" (R. 383–384).

On July 5, 1935, when the National Labor Relations Act was approved, the strike was still in effect. On July 19, respondent began to take steps leading to the reopening of its plant (R. 384–385). On July 23, conciliators of the Department of Labor, at the request of the Union, attempted to open negotiations between respondent and the Union, and induced the president of respondent to agree to meet the Union's Scale Committee (R. 385). On that day respondent reopened its plant and several days later respondent's president told the conciliators, contrary to his original promise, that he would not meet either with them or with the Union (R. 385). By August 19, approximately 190 of the production employees of March 23 had returned to work, and by the middle of September respondent had employed a full force (R. 385, 400). On September 20, and again on October 11, the Union wrote asking for a meeting to settle the strike, but received no reply, although respondent received the requests (R. 386).

The Board found that respondent's refusal to bargain with the Union upon the request made on July 23 was an unfair labor practice in violation of Section 8 (1) and (5) of the Act, and ordered respondent to cease and desist from its refusal to bargain with the Union (R. 393). The Board further found that in view of the replacement of the strikers by new men after respondent's refusal

to bargain, the cease and desist order would be futile unless the situation were restored to the *status quo* existing before the violation of the Act (R. 391). Accordingly the Board ordered respondent to reinstate men employed on July 22, 1935, who had not received substantially equivalent employment elsewhere, discharging if necessary persons who were not employed on that date (R. 393).[3]

On July 9, 1937, the Board, pursuant to Section 10 (e) of the Act, filed with the Circuit Court of Appeals for the Seventh Circuit its petition for enforcement of the foregoing order (R. 1–5). On August 11 respondent answered the petition (R. 4a–4d). On November 18 a petition for intervention by certain employees of the respondent was filed (R. 406–412) and was granted on December 3 (R. 412), whereupon the intervenors filed, on December 18, an answer to the Board's petition for enforcement (R. 413–415). On April 28, 1938, with Circuit Judge Treanor dissenting, the court denied the Board's application (R. 425). A peti-

[3] The order further provided that a preferred list should be created for those individuals employed on July 22 for whom there would be no jobs after the discharge of those first employed following the unfair labor practices (R. 393). Back pay was not ordered. Respondent has argued that the order required the discharge of all men employed after July 22, 1935, regardless of whether such discharges were necessary to make room for men previously employed. That is not what the order means; and, as the Board advised the court below, it did not and does not intend the order to have any such effect.

tion for a stay of mandate was filed by the Board on May 17, 1935 (R. 426–427), and granted on May 25, 1938 (R. 427). On October 10, 1938, this Court granted certiorari (R. 428).

SPECIFICATION OF ERRORS TO BE URGED

The Circuit Court of Appeals erred:

1. In holding that the strike violated the agreement of July 14, 1934.

2. In not holding that individuals who cease work in connection with a current labor dispute remain employees for the purposes of the National Labor Relations Act, whether or not their cessation of work was in breach of contract.

3. In not holding that it is an unfair labor practice for an employer to refuse to bargain collectively with the authorized representative of his striking employees in an appropriate bargaining unit, whether or not the strike is in breach of contract.

4. In not holding that the National Labor Relations Act authorizes the National Labor Relations Board to require the reinstatement of striking employees, with whom the employer has wrongfully refused to bargain collectively, whether or not the strike is in breach of contract.

5. In not holding that the defenses of unclean hands and equitable estoppel, based upon conduct of the employees, cannot be urged against or defeat a petition by the National Labor Relations Board for enforcement of its order.

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6. In not holding that the fact that the strike began before the passage of the Act had no effect upon the validity of the Board's order.

7. In refusing to enforce the Board's order as supported by the evidence and the findings.

SUMMARY OF ARGUMENT

I

A. Respondent's argument that it did not violate Section 8 (5) of the Act is based, first, upon its contention that there is no evidence to support the finding of the Board that it refused to bargain with the Union. The contention can not be supported. The court below refused to accept it, and it is completely disproved by the uncontradicted testimony of respondent's president.

B. Respondent's second contention, that at the time of the refusal to bargain the Union did not represent the majority of its employees, is also without merit. Respondent does not deny that the Union had a majority if the strikers remained employees within the meaning of the Act, but urges that because of two factors the strike terminated the employment relationship. The first factor—that the strike began prior to the effective date of the Act—is completely irrelevant. Section 2 (3) of the Act, which includes within the term "employee" individuals "whose work has ceased as a consequence of, or in connection with, any current labor dispute", is plainly applicable and controlling. Indeed, the strikers remained employees at

common law. The second factor—an alleged breach of contract which was at most a technical breach—is equally irrelevant. This Court held in *National Labor Relations Board* v. *Mackay Radio & Telegraph Co.*, 304 U. S. 333, 344, that whether there is a "labor dispute" does not depend upon the justification of the position of the parties. A contrary holding would be at odds with the intention of Congress expressed in the Act, and would frustrate in important measure the ends sought to be achieved.

C. Finally, respondent contends that further negotiations were not required because they would have been futile. The record, however, shows that at the time of the request there was a reasonable probability that by full and fair collective bargaining with the Union, respondent could peacefully have settled the strike. Even if an impasse had been reached at the time the strike took place, conditions had so changed by the time the request to bargain was made that there then existed a reasonable probability of a peaceful settlement of the dispute.

II

Upon the finding that respondent had violated Section 8 (5) of the Act, the court below should have enforced the cease and desist portions of the Board's order. Upon a finding by the Board that an employer has committed an unfair labor practice, under Section 10 (c) the Board must issue a cease and desist order which should be enforced

by the courts. The contrary result reached by the court below, upon the ground that the alleged breach of contract by the Union "estopped" it to seek enforcement of the order, is plainly erroneous. Enforcement proceedings under the Act are statutory, and it is the Board, not the employees, who is the complainant. In that capacity, the Board represents the public interest in obtaining compliance with the statute, and can certainly not be "estopped" or charged with unclean hands by reason of the conduct of the employees. The decision of the court below is contrary to both the policy of the Act and the intent of Congress as shown by the legislative history of the Act.

III

The court below also refused to enforce the order of the Board requiring respondent to reinstate those persons who had been its employees at the time the unfair labor practice occurred. In this respect, too, we submit that the court erred. By Section 10 (c) of the Act the Board was plainly empowered to order reinstatement. Whether, in the circumstances of a particular case, reinstatement will effectuate the purposes of the Act is a matter for the discretion of the Board, the exercise of which will not be disturbed by the courts unless plainly unreasonable. Here the reinstatement order was essential to carry out the policy of the Act, since to have denied it would have been to allow the effects of the unfair labor practice to

continue. That the employees had been guilty of what can at most be described as a technical and minor breach of contract does not lead to a contrary conclusion.

ARGUMENT

The order of the National Labor Relations Board here involved (R. 392–393) requires respondent to cease and desist from refusing to bargain collectively with the Union as the exclusive representative of respondent's production employees. In addition, as affirmative relief necessary to restore the situation existing prior to the violation of the Act, respondent is ordered to discharge from its employment all production employees who were not employed by it on July 22, 1935, reinstate to the vacancies so created individuals who were so employed and have not since received substantially equivalent employment elsewhere, and to place the remainder of such individuals on a preferred list. The order was completely set aside by the court below. In reaching its decision, the court refused to accept respondent's contention that there is no evidence to support the finding of the Board that it refused to bargain collectively in violation of Section 8 (5). It did, however, accept the further argument that a strike by the employees which it found to be in breach of a contract disqualified them from seeking relief before the Board, and required that enforcement be denied to all portions of the order.

We submit that the order of the Board should have been enforced in all respects. In Point I we shall show that the evidence adequately supports the Board's finding that respondent refused to bargain collectively in violation of Section 8 (5) of the Act. In Point II we shall show that the alleged violation of the contract did not warrant the refusal of the court below to enforce the cease and desist provisions of the Board's order. Finally, in Point III, we shall show that the reinstatement provisions of the Board's order should also have been enforced.

I

The Evidence Supports the Board's Finding That Respondent Refused to Bargain Collectively With the Authorized Representatives of Its Employees in Violation of Section 8 (5) and (1) of the Act

A. Respondent refused, on request, to meet and negotiate with the Union

Respondent contends that there is no substantial evidence to support the finding that it refused to bargain with the Union on or about July 23, 1935 (R. 392). The court below did not agree; indeed, it stated that respondent had engaged in "an open, defiant flouting of the law of the land" (R. 422).

The evidence in support of the finding is contained in the testimony of respondent's president, Gorby. He testified that on July 23 or 24

he had a three-hour conference with two conciliators of the Conciliation Service of the United States Department of Labor (R. 303), who had been asked by the Union to try and arrange a meeting between the representatives of the Union and respondent (R. 72–73, 144). Gorby admitted that the request for a meeting was made (R. 304), and that he agreed to meet with the Union committee (R. 304–305). Gorby did not think that the conciliators mentioned the purpose of the meeting, but testified that "we would know the purpose, however" (R. 304). Gorby also admitted that a few days later he telephoned to one of the conciliators and stated that he would not meet with either the conciliators or the Union committee (R. 305). The conciliator, who had previously informed the Union that Gorby had promised to negotiate (R. 143), now told it that respondent's president had changed his mind (R. 75, 143–144).[4]

B. AT THE TIME OF RESPONDENT'S REFUSAL TO BARGAIN THE UNION WAS THE AUTHORIZED REPRESENTATIVE OF A MAJORITY OF THE EMPLOYEES

If the strikers remained employees within the meaning of the Act, it is undisputed that at the time of respondent's refusal to meet the Union it

[4] Respondent's position is further emphasized by the fact that when on September 20 and on October 11 the Union wrote to respondent asking for meetings to settle the strike, respondent entirely ignored the communications (Pet. Exs. 5, 6; R. 76–77, 306).

represented a majority of respondent's employees.[5] On the other hand, if the strikers were not employees within the meaning of the Act at that time, as the court below held (R. 421), respondent concededly had no obligation under the Act to bargain with the Union. Respondent and the court below rely upon two factors which are alleged to have caused the strike to result in a termination of the employment relationship: that the strike occurred prior to the effective date of the Act, and that the strike was in breach of a contract between respondent and the Union. It is far from clear upon the record that the contract was in fact breached by the employees, as we shall show below, pp. 38–39. In any event, neither factor, we submit, has the effect which respondent seeks to attribute to it.

1. *The strikers were employees under the Act on July 23, 1935, although the strike commenced prior to the effective date of the Act*

By Section 2 (3) of the Act, *infra*, p. 42, it is provided that, when used in the Act:

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[5] Prior to the strike there were some 500 production employees at the plant (R. 89). At the beginning of the strike 485 of the employees belonged to the Union and all answered the strike call (R. 173, 175, 177). The only evidence that other employees had been given jobs prior to July 23 is that 50 strikebreakers entered the plant under armed protection on July 19 (R. 69–71). Counting these new men as employees, it is apparent that the Union still represented a substantial majority if the strikers are also considered to be employees. There is no contention to the contrary.

> The term "employee" shall include * * * any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice, and who has not obtained any other regular and substantially equivalent employment, * * *.

There can be no doubt, here, that the cessation of work—the strike—was "in connection with" a "labor dispute", and that it was "current" on July 23, 1935.[6] No more is required. Indeed, the court below had stated, earlier in its opinion, that "ordinarily the status of employer-employee exists, although the strike occurred before the passage of the National Labor Relations Act and continued after its passage" (R. 420). Two other Circuit Courts of Appeals, with whose decisions the court did not indicate disagreement, had previously specifically so held. *Jeffery-De Witt Insulator Co.* v. *National Labor Relations Board,* 91 F. (2d) 134 (C. C. A. 4th), certiorari denied, 302 U. S. 731; *National Labor Relations Board* v. *Carlisle Lumber Co.,* 94 F. (2d) 138 (C. C. A. 9th), certiorari denied, No. 907, May 23, 1938.

The *Jeffery-De Witt* and *Carlisle Lumber Co.* cases are clearly correct. The language of the Act is plain and unqualified. Even at common law, it

[6] That the labor dispute was "current" on July 23, 1935, is attested by the facts that the first attempt to resume operations was on July 19, 1935; and that respondent did not have a full force of employees until the middle of September 1935 (R. 69–71, 238–239, 241–242).

is well settled that the employment relation continues to subsist during a strike. *Michaelson* v. *United States,* 291 Fed. 940, 942 (C. C. A. 7th), reversed on other grounds, 266 U. S. 42; *Iron Moulders' Union* v. *Allis-Chalmers Co.,* 166 Fed. 45, 52 (C. C. A. 7th); *Dail-Overland Co.* v. *Willys-Overland Co.,* 263 Fed. 171, 187, aff'd, 274 Fed. 56, 65 (C. C. A. 6th); *Fryns* v. *Fair Lawn Fur Dressing Co.,* 114 N. J. Eq. 462; *State* v. *Personett,* 114 Kan. 680; *Uden* v. *Schaeffer,* 110 Wash. 391; *Greenfield* v. *Central Labor Council,* 104 Ore. 236. This common law rule was expressly reaffirmed in the *Jeffery-De Witt* and *Carlisle Lumber Co.* decisions. At the time when the Act became effective, therefore, respondent had employees and the Act applied to the existing employment relation.

2. *The strikers were employees under the Act on July 23, 1935, whether or not they had gone on strike in breach of the contract between respondent and the Union*

It is not denied that the strikers in this case ceased work in connection with a strike. They must, therefore, be comprehended within the statutory definition of "employee" given in Section 2 (3), *supra,* p. 42, unless a strike called in breach of a contract is not a "labor dispute" within the meaning of that section. That term, however, is further defined in language which leaves no doubt of its all-inclusive character. Section 2 (9), *infra,* p. 42, defines the term "labor dispute," as used in the Act, as—

> any controversy concerning terms, tenure or conditions of employment or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, * * *.

To hold otherwise is simply to limit the content of the phrase "labor dispute" by the justification of the position of the parties. A decision by this Court subsequent to the decision of the court below has indicated plainly that that may not be done. *National Labor Relations Board* v. *Mackay Radio & Telegraph Co.*, 304 U. S. 333, 344.[7]

Nor is such a position contrary to the basic purposes of the Act, as respondent urges. On the contrary, the exception proposed by respondent would frustrate in important measure the purposes which Congress intended to achieve. The Act guarantees certain rights to employees, not as ends in themselves, but in order to promote the solution of industrial controversies through collective bargaining rather than through conflict which burdens the nation's commerce (Section 1). If a strike in

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[7] There is no question in this case as to the employer's power to terminate the employment relation by *discharge* on the ground that the strikers breached their contract. The record is bare of proof that respondent took any action inconsistent with continued existence of the employment relation either before or after the strike began. Indeed, by public advertisement and individual solicitation, respondent repeatedly sought to induce the strikers to return to work (Res. Ex. 17, *infra*, pp. 74–75; R. 98–99, 101, 155–156, 161–164, 170–171, 326–330, 338–339).

technical breach of contract terminates the employment relation and excuses the employer from all obligation under the Act, he is left free to engage in practices which this Court has recognized as "prolific causes of strife" and of consequent burdens to commerce. *National Labor Relations Board* v. *Jones & Laughlin Steel Corp.*, 301 U. S. 1, 42. Further, the effects of a strike during which or by which the breach of contract occurred are prolonged and intensified by exempting the employer from all obligation to negotiate for settlement.

C. NO IMPASSE EXISTED ON JULY 23, 1935, WHICH WOULD RENDER FURTHER NEGOTIATION FUTILE

Finally, respondent contends that its refusal to bargain collectively with the Union did not violate Section 8 (5) for the reason that further negotiation would have been futile. The contention is based upon the assertion that the only matter in issue was that of a closed shop, and that on that matter each side was adamant. The contention was not accepted by the court below (R. 422), and is plainly not supported by the record. The closed shop question was at all times a minor issue completely subordinated to the basic issues in dispute.

The question of a closed shop, although it had been mentioned, was certainly at most a minor issue at all times prior to the strike, and was not an issue at all in the negotiations whose breakdown directly caused the Union to call the strike. Just

prior to te execution of the agreement of July 14, 1934, a member of the Union's Scale Committee said that she would not work with a "scab," but the Committee promptly disclaimed the sentiment and decided "not to discuss or make any remarks of that kind" (R. 187). After the agreement was executed, four meetings were had without mention of the subject (R. 120–122, 188–191). Then, at a meeting on November 26, 1934, the Committee, after discussing other issues, stated that it "would like to have" a closed shop, but withdrew the request upon respondent's prompt and vehement objection (R. 199–201, 297–298, 309–310). Gorby, president of respondent, admitted that the matters discussed at this meeting could not be considered demands by the Union upon respondent (R. 200–201). This was the last mention of the issue between the parties until March 17, 1935, although frequent meetings were held during the interim.

The subject was completely out of the picture on January 4, 1935, when the other matters with respect to which the Union had been attempting to negotiate with respondent were specifically formulated in the eight proposals submitted to respondent by the Union on that date. In that formulation the Union proposed that it be recognized as the collective bargaining representative of all respondent's employees; that bad workmanship be corrected without additional cost to respondent, but that the employees be exempted from responsibility for certain types of defects; that the Union inves-

tigate complaints of laxity lodged against employees and cooperate in enforcing respondent's rules; that respondent agree to lay off any member of the Union suspended therefrom; and that minimum wages be increased 5 cents per hour at the end of 90 days if unrest had been eliminated and production losses reduced to a minimum at that time (Resp. Ex. 1, *infra,* pp. 65–66; R. 78, 130, 203). A closed shop was not mentioned.

Respondent did not reply to the Committee (R. 59, 131), but sent a circular letter to the employees individually on January 21 in which it refused to recognize the Union as sole bargaining agent, stated that the enforcement of respondent's rules and investigation of laxity were exclusively concerns of the management, refused to lay off suspended Union members, and rejected the suggested minimum wage increase (Pet. Ex. 1, *infra,* pp 44–49; R. 58, 131, 204, 311–312). On February 5, the Union asked that the January 4 proposals and respondent's answers thereto be submitted to arbitration under Section 10 of the July 14, 1934, agreement, *supra,* p. 4 (Resp. Ex. 14, *infra,* p. 73; R. 204). Three days later respondent sent another circular to the employees, informing them that its lawyers had stated that the Union committee was "acting against the contract when they request that their proposal be submitted to arbitration—under the contract their proposal cannot be taken to arbitration" (Pet. Ex. 3, *infra,* pp. 52–54; R. 207).

On the same day respondent wrote to the Union expressing its view that the January 4 proposals were not arbitrable and reaffirming its prior outright rejection (Pet. Ex. 10, *infra,* pp. 55–56). The Union promptly replied, requesting respondent to deal with the Committee and not with the employees individually and stating that "if this action is taken again this body will consider such action as discrimination * * *" (Res. Ex. 15, *infra,* pp. 73–74; R. 208). Respondent nevertheless addressed a further circular letter to the individual employees on February 19 stating that the issue underlying its entire dispute with the Union was that of wage increases (Pet. Ex. 13, *infra,* pp. 57–63; R. 208). In this letter respondent also launched a bitter attack upon the Committee. On March 5 the Union again protested against respondent's repeated direct communications with the employees (R. 135–136, 209–210, 315). The Committee also made a further effort to obtain some modification of respondent's unequivocal and total rejection of the January 4 proposals. On March 11 the proposals were again presented to respondent by the Committee. Respondent replied that its prior answers were final, and accused the Union of causing "trouble and unrest" in the plant (R. 152, 211–212, 315–316).

On March 17 respondent received from the Union a resolution which it had adopted at a meeting held the previous day (Pet. Ex. 2, *infra,* pp. 50–52; R. 61, 213). The resolution summarized the

differences between respondent and the Union, and leaves no doubt as to the basic matters in dispute. It recited that the Union represented a large majority of the employees, and had attempted to bargain collectively and to comply with the July 14 agreement, but that petitioner had violated that agreement by refusing to arbitrate the Union's proposals, and by failing to comply with other provisions.[8] It accused respondent of bad faith in carrying on negotiations relating to the January 4 proposals, and of attempting to injure the morale of the Union members by attacking the Scale Committee in its circular of February 19. Compare *National Labor Relations Board* v. *Remington Rand, Inc.*, 94 F. (2d) 862 (C. C. A. 2d), certiorari denied, No. 970, May 23, 1938. It pointed out that the Union had waited more than three months for adjustment of its January 4 proposals while respondent had exerted every effort to destroy it. It was resolved, therefore, that since "peace and harmony cannot exist under the present condition, owing to the unfair practices of the Company" the Union members would not work with anyone eligible for Union membership who did not show a willingness to join

[8] Section 9 of the July 14 agreement (R. 16–17) provided that "any employee required to report for duty at the beginning of a shift shall receive a minimum of two hours' pay." At meetings with respondent on February 7 and March 5 the Committee tried, unsuccessfully, to obtain such pay for employees who had reported but had been prevented from working due to failure of power (R. 205–206, 210–211, 312–315).

by March 23, 1935 (Pet. Ex. 2, *infra*, pp. 50–52). The strike began on March 23 (R. 64, 216).

The strike resolution was, it is true, in terms conditioned upon a closed shop demand. The grievances set out in the resolution of March 17, however, show plainly that the closed shop was regarded simply as a remedy by which respondent's attempts to undermine the Union could be thwarted, and its other grievances brought to a full and honest collective bargaining. The financial secretary of the Union specifically testified that the closed shop issue did not cause the strike (R. 82–84). Respondent's unqualified rejection of the January 4 proposals, and its refusal to submit them to arbitration, brought home to the Union members the realization that there was no way of attaining the goal [*] of a wage increase by peaceful means. This precipitated the strike. That the closed shop was asked in the resolution does not, therefore, indicate that what was in essence a wage dispute, as respondent itself stated in its circular of February 19 (Pet. Ex. 13, *infra*, pp. 57–63), could not have been settled as a wage dispute. Respondent does not and cannot contend that an impasse had

[*] The Union's primary aim was to obtain a wage increase for its members. Its requests for an increase were met with respondent's plea that unrest in the plant, with resultant spoilage of work, made any increase infeasible (see, *e. g.*, R. 199–200, 212, 297–298). The Union's January 4 demands were designed to reduce waste and thus obviate respondent's objection to the small increase provided in the last paragraph of the proposals.

been reached at any time on the question of wages. Negotiations on that issue and on the subsidiary questions of respondent's breach of the contract and attacks upon the Union might well have avoided or terminated the dispute. There was no indication that the Union, by insisting upon a closed shop, would thwart a settlement satisfactory to it on the other issues.

Respondent also contends, however, that even if no impasse had been reached prior to the strike, an irreconcilable conflict developed on June 11, 1935, during the strike, by reason of the Union's demand for a closed shop at that time. The record makes it clear, however, that the Union took no inflexible stand, and that the failure of the conference to settle the strike cannot be traced to the Union's position on that matter. The closed shop question was undoubtedly discussed (R. 245–246, 300–301), but it is plain that the failure of the meeting is largely attributable to respondent's position that it would take all the strikers back without discrimination "but without union recognition or agreement" (R. 88, 301–302, 66, 140; Pet. Ex. 14, *infra*, pp. 63–65; Resp. Ex. 17, *infra*, pp. 74–75). The Union replied that "we couldn't countenance such a proposal as that" (R. 88). There was never even an opportunity for the Union to manifest unwillingness to yield on the closed-shop issue, since respondent's terms for a settlement, which were wholly unrelated to the closed-shop issue and challenged the very existence of the

Union, immediately eliminated all possibility of an agreement. But any impasse on this issue, as distinguished from the closed shop issue, was necessarily resolved on July 5, when the Act became effective. Thereafter respondent could not properly insist upon non-recognition of the Union as a term of settlement, and the way was opened to negotiations on other issues upon which neither party had taken an inflexible stand.

In any event, whatever may have been the situation on or before June 11, it cannot excuse respondent's refusal to bargain on July 23, six weeks later. Conditions had markedly changed. The plant was reopening (R. 238, 69–71, 142, 221), martial law had been declared and picketing forbidden (R. 72, 112, 217, 235), and respondent had struck at the morale of the strikers by going over the heads of the Union Committee and soliciting individual members to return to work (R. 98–99, 155–156, 161–164, 170–171, 326–330, 338–339). The fact that the Union approached respondent through Department of Labor conciliators, whose sole purpose on the scene was to effect a settlement, demonstrated its conciliatory intention and gave every reason to expect that negotiation would yield a settlement by compromise, as the Board found (R. 390).[10] A

[10] Illustrative of the manner in which a union may abandon former demands is the fact that on October 28, 1935, the Union sent Max Schafer, vice president of the Central Labor Union of Vigo County, to ask respondent to reinstate the striking employees "on the same terms and conditions as existed previous to the strike" (R. 168, 305–306).

similar situation was considered by the Circuit Court of Appeals for the Fourth Circuit in *Jeffery-De Witt Insulator Co.* v. *National Labor Relations Board,* 91 F. (2d) 134, certiorari denied, 302 U. S. 731. There negotiations between the company and its striking employees had reached a plain impasse on June 20, 1935. On July 15, conciliators from the United States and the West Virginia Departments of Labor offered their services as mediators. The company's refusal to reopen negotiations was held by the Board to violate Section 8 (5) of the Act. In affirming the Board's order, the Circuit Court of Appeals rejected the company's contention that its action was not an unfair labor practice because of the earlier stalemate in negotiations (91 F. (2d) at 139):

> * * * The answer to this is that nearly a month of "cooling time" had elapsed since the negotiations of June 15th to 20th, the status of the controversy had undergone considerable change as a result of the operation of the plant, the striking employees after nearly a month of idleness were doubtless willing to make concessions to compromise the matters in difference, and conciliators had arrived upon the scene for the purpose of trying to secure an adjustment.

President Gorby replied that he was unwilling to discharge those who "had come to work in his plant after it had been strike-bound" and that "there would be no agreement with any union" (R. 168–169, 305–306).

II

Upon the Finding That Respondent Had Violated Section 8 (5) and (1), the Cease and Desist Portions of the Board's Order Were Required by the Act, and Should Have Been Enforced

Respondent urges, alternatively, that whether or not the Act had been violated, an asserted breach by the employees of the contract of July 14, 1934, barred the enforcement of the Board's order. This contention was fully sustained by the court below, and the order of the Board was set aside on this ground (R. 421–423). Although the court did not distinguish between the cease and desist and the affirmative provisions of the order, they can be more easily discussed separately. Accordingly, we will postpone the discussion of the affirmative provisions to Point III, *infra*. Here, we will show that so far as the order requires respondent to cease and desist from the unfair labor practices in which it had been engaged, it was not only authorized, but required, by the Act.

The text of the statute makes it plain that upon a finding by the Board that an employer has committed an unfair labor practice, the Board must issue a cease and desist order. Section 10 (c) of the Act (*infra*, p. 43) provides, without qualification, that upon such a finding the Board "shall issue" an order requiring the employer to cease and desist from such practice. Cf. *National Labor*

Relations Board v. *Pennsylvania Greyhound Lines, Inc.*, 303 U. S. 261, 265. The definitions of unfair labor practices in Section 8 are also unqualified.

The court below did not deny that the Board was authorized to issue the cease and desist provisions of the order. It denied enforcement upon the assumption that a proceeding for the enforcement of an order of the Board is equivalent to a suit in equity by the employees against their employer, and that by reason of their breach of contract, the employees were "estopped" to seek enforcement of the order (R. 421, 422) and were not "entitled to invoke the aid of a court of equity" (R. 423). In other words, enforcement was denied upon considerations irrelevant either to the existence of the unfair labor practices or to the power of the Board to require their cessation.

The short answer, of course, is that an enforcement proceeding under the Act is a statutory one, not a suit in equity by those individuals who may benefit through the enforcement of the order. Cf. *National Labor Relations Board* v. *Jones & Laughlin Steel Corp.*, 301 U. S. 1, 48. The Board is not a mere nominal complainant on behalf of the employees; it is the real complainant. The statute is in the truest sense a public statute; the Board as complainant represents the public. Its function is to obtain compliance with a public statute. *Agwilines, Inc.* v. *National Labor Relations Board*, 87 F. (2d) 146 (C. C. A. 5th). In this capacity the Board certainly should not be "estopped" or

charged with "unclean hands" by reason of breach of contract on the part of the Union or the employees involved.

The contention which is now urged by respondent has been passed upon by both the Second and Ninth Circuit Courts of Appeals, and has been rejected by both. *National Labor Relations Board* v. *Remington Rand, Inc.*, 94 F. (2d) 862 (C. C. A. 2d), certiorari denied, No. 970, October Term, 1937; *National Labor Relations Board* v. *Carlisle Lumber Co.*, 94 F. (2d) 138 (C. C. A. 9th), certiorari denied, No. 907, October Term, 1937. In the *Carlisle Lumber Co.* case, the court stated (94 F. (2d) at p. 146):

> Respondent contends that the proceeding before us is an equitable proceeding; that the union's picketing resulted in violence, as the Board found, which was a violation of the laws of Washington, and therefore enforcement should be denied for the reason that the union has not come into the court with clean hands. It is not the union, but the Board, which is asking enforcement.

In the *Remington Rand* case, the Second Circuit stated (94 F. (2d) at p. 872):

> There remains only the defence raised by the respondent that the union has disqualified itself by its own misconduct from appealing to the Board; a carry over from the doctrine of equity that the court will not intervene in favor of one who has been

> guilty of wrongful conduct in the transaction in question. This defence was overruled in *National Labor Relations Board* v. *Carlisle Lumber Co., supra,* 94 F. (2d) 138, and we agree, although our reasons go beyond the procedural peculiarity that the Board is the petitioner. * * * the conduct of a union, like that of an employer, not only during the negotiations when there are any, but before there are, may be relevant in ascertaining whether the proposal to confer is genuine, or only part of the tactics of the fight. Nothing else can be material; though the union may have misconducted itself, it has a locus poenitentiae; if it offers in good faith to treat, the employer may not refuse because of its past sins. * * *

Aside from the reasons expressed in those opinions, which, we submit, are equally applicable here, it is plain that the contention is contrary to the whole purpose of the Act. Cease and desist orders look to the future, and are designed to prevent recurrence of conduct found by Congress and recognized by this Court to be "prolific causes of strife" which burden interstate commerce. *National Labor Relations Board* v. *Jones & Laughlin Steel Corp.,* 301 U. S. 1, 42. This purpose is thwarted if employers who have violated the law may continue to do so because their employees have been guilty of a breach of contract. It would be indeed strange if this wholly extraneous factor should allow an employer to indulge in conduct which has been specifically declared by Congress to

be contrary to public policy, and apt to result in burdens and obstructions to interstate commerce.

The Act was not intended to cover the entire field of labor relations. *National Labor Relations Board* v. *Jones & Laughlin Steel Corp., supra,* at 46. Employer and employee alike are left to those remedies against breaches of contract and other unlawful acts which are afforded at common law or under other statutes. The employer was not deprived of these remedies; nor was the existence of facts which would enable him to invoke them intended to be a ground for permitting his own violation of the Act to continue unchecked. As the reports of its committees reveal, Congress realized that if the Board were compelled to make findings upon recriminations and counter-recriminations of this sort it would be overwhelmed and its energies diverted from preventing and correcting the unfair labor practices set out in Section 8—the sources of the evils to be corrected.[11] The court below has read

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[11] Compare the following statement by the Committee on Education and Labor of the Senate (Sen. Rep. No. 573, 74th Cong., 1st Sess.) in rejecting the proposal that the Board have power to prevent burdens to commerce occasioned by employee action (pp. 16–17):

"Nor can the committee sanction the suggestion that the bill should prohibit fraud or violence by employees or labor unions. The bill is not a mere police court measure. The remedies against such acts in the State and Federal courts and by the invocation of local police authorities are now adequate, as arrests and labor injunctions in industrial disputes throughout the country will attest. * * * In addition, the procedure set up in this bill is not nearly so

back into the statute what was deliberately omitted because it would frustrate what Congress intended to achieve.

III

The Order of the Board Requiring the Reinstatement of the Striking Employees Was Neither Arbitrary nor Unreasonable, and Should Have Been Enforced

As we have already pointed out, *supra*, p. 29, the court below, without distinguishing between the cease and desist and the affirmative relief portions of the order of the Board, set both aside because it found that the employees had breached the contract of July 14, 1934. In Point II, *supra*, we dealt with the effect of the alleged breach on the validity and enforcement of the cease and desist portions of the order. We come now to the failure of the court to enforce those provisions of the order by which the Board attempted to restore the status disrupted by respondent's unfair labor practices.

Section 10 (c), *infra*, p. 43, proides that the Board, upon finding that unfair labor practices

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well suited as is existing law to the prevention of such fraud and violence. * * * The only results of introducing proposals of this sort into the bill, in the opinion of the committee, would be to overwhelm the Board in every case with countercharges and recriminations that would prevent it from doing the task that needs to be done."

This section of the report was quoted with approval by the Committee on Labor of the House of Representatives. H. Rept. 1147, 74th Cong., 1st Sess., p. 16.

have occurred, shall issue an order requiring the employer:

> * * * to take such affirmative action, including reinstatement of employees with or without back pay, as will effectuate the policies of this Act.

Under that provision, Circuit Courts of Appeals have uniformly sustained orders of the Board directing an employer, who has prevented realization of a probable settlement by refusing to bargain with his employees on strike, to restore the strikers to positions of employment, discharging, if necessary, employees first hired after the date of the unfair labor practices.[12] *Black Diamond S. S. Corp.* v. *National Labor Relations Board,* 94 F. (2d) 875 (C. C. A. 2d), certiorari denied, No. 872, Oct. Term, 1937; *National Labor Relations Board* v. *Remington Rand, Inc.,* 94 F. (2d) 862 (C. C. A. 2d), certiorari denied, No. 970, Oct. Term, 1937; *Jeffery De Witt Insulator Co.* v. *National Labor Relations Board,* 91 F. (2d) 134 (C. C. A. 4th), certiorari denied, 302 U. S. 731; *National Labor Relations Board* v. *Carlisle Lumber Co.,* 94 F. (2d) 138 (C. C. A. 9th), certiorari denied, No.

[12] This relief is entirely consistent with the employer's right, pointed out in *National Labor Relations Board* v. *Mackay Radio & Telegraph Co.,* 304 U. S. 333, to counteract economic pressure of the strikers by hiring new workers in their stead prior to the commission of unfair labor practices. In the case at bar, respondent is required only to discharge, if necessary to make room for the strikers, those employees who were first hired after the Act had been violated.

907, Oct. Term, 1937; *National Labor Relations Board* v. *Biles Coleman Lumber Co.*, 98 F. (2d) 18 (C. C. A. 9th). In the *Remington Rand* and *Carlisle Lumber Co.* cases, various illegal acts by the employees were presented as defenses to the petitions for enforcement of the Board's order but were rejected by the Circuit Courts of Appeals (*supra*, pp. 31–32).[18]

There can be no doubt, therefore, that the affirmative relief ordered in the present case is within the scope of Section 10 (c). Nor can there be any doubt that it is for the Board to determine, in its "judgment and discretion" whether "upon the basis of the findings, * * * the case is one requiring an affirmative order, and in choosing the particular affirmative relief to be ordered." *Na-*

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[18] In a supplemental opinion rendered in the *Carlisle* case on October 15, 1938, the Ninth Circuit expressly refused to follow the decision of the court below in the present case on this point. Judge Haney stated:

"Respondent again contends that reinstatement and back pay should not be awarded because the men in question committed acts of violence, and do not, therefore, have clean hands. We answered that contention in the prior decision by the statement that 'It is not the union, but the Board, which is asking enforcement'. (94 F. (2d) 138, 146.) What I have said regarding the purpose of the act is also applicable here, and requires the conclusion that the penalty is not controlled by equity. See also National Labor Relations Board v. Remington Rand, Inc. (C C A 2), 94 F. (2d) 862, 872; Senate Committee on Education and Labor Report No. 595, 74th Congress, p. 16. I am unable to follow a contrary holding in National Labor Relations Board *v.* Columbian Enameling and Stamping Co. (C C A 7), 96 F. (2d) 948, 953."

tional Labor Relations Board v. *Pennsylvania Greyhound Lines, Inc.*, 303 U. S. 261, 265. Determination whether employee misconduct is sufficiently serious to permit the effects of unfair labor practices to continue is within its "judgment and discretion."[14] Unless plainly unreasonable, the conclusion reached by the Board will not be disturbed by the courts. Certainly the court below could not properly substitute its judgment for that of the Board with respect to the appropriateness of the relief, as it seems to have done. Cf. *Swayne & Hoyt, Ltd.* v. *United States*, 300 U. S. 297, 303–304; *United States Navigation Co.* v. *Cunard S. S. Co.*, 284 U. S. 474, 485; *Manufacturers Railway Co.* v. *United States*, 246 U. S. 457, 482.

Upon the basis of the findings in the present case, we submit that the affirmative relief ordered was essential to carrying out the policies of the Act. The Board found (R. 391) that it would be futile to require respondent to cease and desist from its refusal to bargain with its employees unless the employees were restored to their position of employment in the plant. Consequently, it concluded (R. 391):

> Under these circumstances we must restore, as far as possible, the situation prior to the violation of the Act, in order that the process

[14] The Board has, on occasion, held that employee misconduct warranted withholding the normal reinstatement remedy. *Kentucky Firebrick Co.*, 3 N. L. R. B. 455, enforcement granted 99 F. (2d) 89 (C. C. A. 6th); *Republic Steel Corp.*, 9 N. L. R. B., No. 33, decided October 18, 1938, at 175.

of collective bargaining, which was interrupted, may be continued.

A contrary conclusion would simply allow the effects of the unfair labor practices to continue—a plain frustration of the policies of the Act.

The breach of contract which is alleged to have been committed by the employees forms no basis for holding that this conclusion of the Board is unreasonable or improper. A brief review of the facts shows clearly that the employees' misconduct consisted, at most, of a technical breach of contract which they, in turn, believed that respondent itself was breaching.

Contrary to respondent's first contention which was accepted by the court below, the employees did not violate Section 10 of the contract, which provided that disputes "arising under this contract" should be arbitrated, and that "there shall be no stoppage of work by either party to this contract pending decision by the committee of arbitration" (R. 17). The agreement, in other words, forbad strikes *during* arbitration. However, as we have pointed out, *supra*, pp. 22–23, respondent refused to allow the proposals submitted by the Union on January 4, 1935, to be submitted to arbitration. Whether respondent was correct is immaterial; at least, no arbitration was had, and Section 10 never came into operation. The court below, in deciding that the strike was in violation of Section 10 (R. 420, 423) did not explain how the provision ever became operative, and completely

ignored the detailed facts found by the Board (R. 381, 387) which made it patently inapplicable.

Respondent also urges that the strike occurred because respondent refused to grant the Union a closed shop, whereas by Section 3 of the contract of July 14 (R. 16), both parties had been committed to an open shop, and that the strike thereby breached that section. We have shown above, pp. 21–27, that the closed shop issue was a minor one at all times, and that the crisis which resulted in the strike was due to other issues, among which were claims by the Union that respondent had failed to abide by the contract. Respondent's contention, therefore, resolves itself into the highly technical one that, although the employees could strike to obtain the demands which were at the basis of the dispute, the strike became a breach of the contract because of the advancement of the proposal for a closed shop—a proposal never seriously urged, and never a part of the strike in the sense that its advancement constituted a bar to settlement.

Under what could, at most, therefore, be a technical breach of contract, it was clearly not an abuse of discretion for the Board to decide that correction of what the court below called respondent's "open defiant, flouting of the law of the land" (R. 422) was more important to the achievement of the purposes of the Act than discipline of the employees.

Finally, respondent urges that the reinstatement order will not "effectuate the policies of the Act"

because it will encourage violation of contracts on the part of employees and thus frustrate the basic purpose of the statute. The contention is without merit. The policies of the Act require that the effects of unfair labor practices be dissipated and conditions restored as nearly as possible to the status disrupted by those practices. It would clearly frustrate this end to require cessation of the practices but permit their effects to continue. As the Board properly found (R. 391) restoration of the *status quo* can be effected only by restoring the men to the positions to which they might have returned long since had respondent conformed its labor practices with the law.

Moreover, the argument is based upon a wholly erroneous concept of the Act. We have pointed out, *supra*, pp. 32–34, that the employer has various familiar remedies against breaches of contract, and it cannot be presumed that resort to those remedies is not equally effective to prevent employee actions which might promote industrial strife as enforcement of this Act is to discourage actions of the same type by employers. The philosophy of respondent's contention is that, if one set of sanctions has failed, the other and more important set should not be applied in the hope that their withholding will in the future reinforce the first set in other cases. The effects of the unfair labor practices forbidden by the Congress cannot be permitted to continue on any such plea. The purpose of the Na-

tional Labor Relations Act is to safeguard commerce by guaranteeing to employees protection of the rights conferred by this statute. A purpose of this significance cannot be thwarted upon a mistaken conception that the equities are pointed in favor of an employer who feels that injury by the misconduct of his employees justifies him in ignoring the law.

CONCLUSION

For the reasons above set forth it is respectfully submitted that the judgment of the court below should be reversed with directions to enforce the order of the Board.

ROBERT H. JACKSON,
Solicitor General.

CHARLES A. HORSKY,
Special Attorney.

CHARLES FAHY,
General Counsel,

ROBERT B. WATTS,
Associate General Counsel,

LAURENCE A. KNAPP,
MORTIMER B. WOLF,
Attorneys,
National Labor Relations Board.

NOVEMBER 1938.

APPENDIX A

The pertinent provisions of the National Labor Relations Act (Act of July 5, 1935, c. 372, 49 Stat. 449, U. S. C., Supp. III, Title 29, Sec. 151 *et seq.*) are as follows:

SEC. 2. When used in this Act—

* * * * *

(3) The term "employee" shall include * * * any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice, and who has not obtained any other regular and substantially equivalent employment, * * *.

(9) The term "labor dispute" includes any controversy concerning terms, tenure or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, * * *.

SEC. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection.

SEC. 8. It shall be an unfair labor practice for an employer—

(1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7.

* * * * *

(5) To refuse to bargain collectively with the representatives of his employees, subject to the provisions of Section 9 (a).

SEC. 9. (a) Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment: *Provided,* That any individual employee or a group of employees shall have the right at any time to present grievances to their employer.

SEC. 10:

(c) * * * If upon all the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action, including reinstatement of employees with or without back pay, as will effectuate the policies of this Act. * * *

APPENDIX B

PETITIONER'S EXHIBIT No. 1

COLUMBIAN ENAMELING
& STAMPING CO., INC.,
Terre Haute, Indiana, January 21, 1935.

To All Factory Employees:

The Scale Committee, representing those of our employees who are members of Union No. 19694, has submitted a proposal to the Company which I am listing below under the heading of "Proposal." followed in each case by the "Company Answer."

Proposal.—The Union agrees to cooperate with the Company in mutual aid for efficiency.

Company Answer.—We, who are employees of the Company are obligated to work with the Company and with each other. Our jobs depend upon our ability to work together efficiently regardless of sex, age, race, or religion. None of us is required as a condition of employment to join or to refrain from joining any particular church, lodge, society, labor union, or other organization. Our interests are mutual and the security of our employment rests upon the successful and uninterrupted operation of our business.

Proposal.—The foreman must report anyone found lax in their duties to the committee. Committee to investigate the complaint and assist the management in correcting the complaint.

Company Answer.—The Company will not agree to this proposal because it is convinced that only

through regularly delegated supervisors, such as foremen, superintendents, and other executives can the factory be managed in a successful and businesslike manner. Our mutual interests are based on the operation of this business on the principle which best serves the needs of our customers and others concerned in the manufacture, distribution, sale, and servicing of our products. Any of us found lax in our duties will be discharged by foremen, superintendents, executive officers, directors, or stockholders, depending upon who our immediate superiors are. All of us working for the Company are paid a wage for a day's work, and we are required to do that day's work. We all know, or should know our duties, and we should all work to the point where efficiency and good conduct prevail, rendering complaints unnecessary.

Proposal.—Company agrees to cooperate with the Union by posting Notice to the effect that Local Union No. 19694 represents a majority of the employees and will be considered the bargaining committee for all the employees of the plant.

Company answer.—The Company will not agree to this proposal, in the interest and the welfare and the rights of both its employees and itself. Employees in this plant have always had the right to bargain individually or collectively, and the Company does not intend to alter or sacrifice the rights of any employee to bargain as he sees fit. Any employee or group of employees is welcome to discuss factory matters with the management of this Company at any time that they may wish to do so.

Proposal.—In case of bad workmanship discovered before the final process of current operation,

ware shall be returned to person responsible, if possible, for correction. Correction to be made without any additional cost—but in no case shall any employee be penalized for the bad work of another.

Employees shall not be responsible for:

Over or under fire.
Fish scales.
Bad Enamel.
Dirty or Greasy ware.
Air pocket separation.
Acid soda deposits.

Company answer.—This procedure is entirely in accordance with the ideas of the Company and is in force at the present time, and, so far as my knowledge goes, has been in force for some time past. Bad workmanship wherever done, or by whomsoever done arises from carelessness, which causes waste, thereby increasing production costs, which does not help any of us. Every one of us should hold ourselves directly responsible to cut costs to the lowest possible point. All of us should feel obligated to reduce costs on whatever operation or job we may be working, because it is only by reducing costs that the Company can make selling prices which will bring an increased volume of business into this Company.

Proposal.—Committees or members shall not discuss grievances during working hours unless called on by the foreman.

Company answer.—This is in accordance with our general factory rules and as such should be observed strictly. We are expected to conduct ourselves in a businesslike way while we are in the plant, and the volume or quality of work performed by us should not be interfered with, during work-

ing hours, by discussions unrelated to Company business, such as personal affairs, grievances, etc. We all should put out an honest day's work and not let any outside influence affect our sincere and honest desire to give the Company efficient, workmanlike service.

Proposal.—The committee agrees to cooperate with the Company in enforcing all shop rules agreed to by the committee and Company.

Company answer.—The enforcement of Company rules is the duty of those holding supervisory positions. The making of Company rules is the management's responsibility. We employees must observe Company rules. It is not the purpose to make any unreasonable rules, but we do expect everyone to observe those which we now have or make in the future.

Proposal.—In order to bring about more efficient workmanship and better cooperation, the Company agrees to lay off any member of the Union who becomes suspended.

Company answer.—The company will not agree to lay off anyone on the grounds that they are suspended from the union because such suspension is a matter of union business and is not Company business. Some time ago the Scale Committee, representing those of our employees who are members of Union No. 19694, requested that the Company agree to make this a closed shop. The Company will not operate as a closed shop because the best interests of the Company, its employees, and its customers, dealers and distributors are served by the principles of an open shop. We do not believe in discrimination against any employee on account of

sex, age, race, or religion. None of us is required as a condition of employment to join or to refrain from joining any particular church, lodge, society, labor union, or other organization. The Company must continue to reserve the right to operate and conduct its business under conditions which provide for the selection, retention, and advancement of each employee solely upon the basis of his or her individual merit, experience, and efficiency.

Proposal.—If at the end of ninety days, the present unrest has been eliminated and the production loss has been reduced to a normal minimum, the Company agrees to make the minimum wage rate forty cents for female and forty-five cents for male.

Company answer.—The Company can not agree to this proposal because the ability to pay any increase in wages depends on much more than the elimination of unrest and the reduction of production losses or spoiled work to a normal amount. The ability to pay increased compensation depends on the amount of business which we can get, the prices which our customers will pay for the ware, and factory cost. There are 24 factories in our industry, of which 17 are as active as Columbian. That means that we have 17 major competitors and 6 minor ones, and we have to fight "tooth and toe nail" against the whole lot in order to get any business into this plant at all. If we are to continue to get a satisfactory volume of business, each of us must make every possible effort to improve the quality of ware and service to the customer, and also effect every possible saving that any one of us can think of. On the point of increased compensation, if and when the Company makes a satisfac-

tory profit showing, it is the management's desire and intention to increase compensation proportionately without anyone in the factory having to ask for an increase, and, furthermore, such an increase will be paid to everyone in the factory.

I am giving each one of you a copy of this memorandum so that you may be informed of the union's requests and the reply that the Company made to the Scale Committee representing those of our employees who are members of Union No. 19694.

Our prospects of getting a somewhat greater volume of business during a part of the year 1935 look fairly good. This is due not only to slightly improved business conditions throughout the whole country, and the introduction of a few new finishes which you have probably already noticed, that is, red ware with white lining, white ware with red bead, and ivory ware with red bead, but, also, because the Company has recently acquired the services of a merchandiser and Sales Manager in Johnnie W. Boston, who was appointed Vice President in Charge of Sales. Mr. Boston's experience covers many years of merchandising housewares. We confidently hope that in time—and you all know that such a job takes time—he will bring into this factory an increased volume of production.

WERNER H. GRABBE,
General Manager.

Petitioner's Exhibit No. 2

ENAMELING & STAMPING MILL EMPLOYEES UNION NO. 19694

TERRE HAUTE, INDIANA

610 N. 14th St.,
Terre Haute, Ind., March 17, 1935.

Mr. Werner Grabbe,
Vice-Pres., Columbian Enam.
& Stamp. Co., Inc.,
Terre Haute, Ind.

Dear Sir: Enclosed is a copy of the resolution passed and adopted by Local No. 19694 at a regular meeting, Saturday, March 16, 1935.

Whereas, Local Union #19694 representing a large majority of the productive workers of the Columbian Stamping and Enameling Company entered into an agreement July 14th, 1934 with the Columbian Stamping and Enameling Company, underwritten by the Regional Labor Board for the purpose of terminating a suspension of operation in effect at that time; and

Whereas, it has been the desire of this Local Union to comply with every provision of the contract and bring about the often repeated suggestion of the agencies of our Government, that of collective bargaining; and

Whereas, The Company has refused to comply with the provisions of the agreement;

(1) By refusing to comply with Section 9, which says in part; "Any employee required to report for duty at the beginning of his shift shall receive a minimum of two hours' pay."

(2) The Company has refused to comply with Section 10 by refusing to arbitrate proposals submitted to them by this Local Union in compliance with Section 5; and

WHEREAS, The Company has violated not only the provisions of the contract but have violated every principle of collective bargaining as well as every principle of common decency;

(1) They violated every principle of collective bargaining by refusing to answer those proposals to which they could find no sane objections.

(2) On February 19th, 1935 they issued a circular letter to all employees questioning the honesty, loyalty and intelligence of the committee elected by this Local Union to negotiate for you, and in the same letter referred to "agitators," no doubt referring to the Representative of the American Federation of Labor, who has assisted us only at our request; and

WHEREAS, Through this unjust and unwise criticism of our chosen representatives, doubt, misunderstanding, dissatisfaction and confusion exists in the plant and among the workers to the detriment of all concerned; and

WHEREAS, The Union has complied with every provisions of the contract:

(1) By entering into the spirit of the agreement by desiring to co-operate in every way possible to bring about a better understanding among the employees and the Management.

(2) By complying with Section 5 of the agreement when ordered by the Local Union to ask for certain changes in the agreement, by sending the required thirty days notice of desired changes, addressed to the Company under date of October 23rd, 1934.

(3) By waiting more than three months for a satisfactory adjustment of our proposals, while the Company used their talent, Corporation lawyers and resources to discourage our membership, belittle our duly elected committee and attempt to tear down the morale of our members; therefore, be it

RESOLVED, That the members of Federal Labor Union #19694, affiliated with the American Federation of Labor believe that peace and harmony can not exist under the present conditions, owing to the unfair practices of the Company, we do hereby refuse to continue to work with any one eligible for membership in our Union who does not show a willingness to become a member on or before March 23rd, 1935; and be it further

RESOLVED, That a copy of this resolution be sent to the Regional Labor Board at Indianapolis, a copy to the Management and a copy to the President of the American Federation of Labor.

Sincerely,

_____ _____

Cor. Sec'y.

PETITIONER'S EXHIBIT NO. 3

COLUMBIAN ENAMELING & STAMPING CO., INC.
TERRE HAUTE, INDIANA

FEBRUARY 8, 1935.

To All Factory Employees:

On January 21, 1935, I sent to all of you the Scale Committee's proposal, together with the Company answer.

On February 5, 1935, the Scale Committee informed me that it was their wish that the proposal be taken to arbitration as provided for in Para-

graph 2 of Section 10 of the July 14, 1934, Indianapolis agreement, which paragraph reads as follows:

> "In any case in which a satisfactory settlement of *a dispute arising under this contract* cannot be reached, such dispute shall be referred to a committee of arbitration composed of two persons selected by the Management, two persons selected by the Union, and fifth person to be selected by these four, who shall reach a decision which shall be final and binding upon both parties to this contract. There shall be no stoppage of work by either party to this contract pending decision by the Committee of Arbitration."

Yesterday I informed the Scale Committee that their proposal is not subject to the arbitration provision of the agreement. Each of you can see, by reading the underscored [*italicized*] words of Section 10 quoted above, that only disputes over subjects specifically mentioned in the agreement may be submitted to arbitration. By referring to the Scale Committee's proposal in my letter of January 21, 1935, you can see that what the Scale Committee is asking for is not contained in the agreement.

The agreement does not say that the Scale Committee shall help make Factory rules, investigate laxness, or that the Company shall discharge any employee suspended from the Union, which would be a deliberate act of discrimination, etc., etc. Read the copy of the Indianapolis agreement posted on the Bulletin Board and compare it with the Scale Committee's proposal, and you will see for yourself that the above is true—not a proposal

they make is included under the Indianapo
agreement.

Our Corporation lawyers advise us that "T
Scale Committee is acting against the contr
when they request that their proposal be su
mitted to arbitration—under the contract th
proposal can not be taken to arbitration."

WERNER H. GRABBE,
Vice President & General Manager

PETITIONER'S EXHIBIT No. 9

COLUMBIAN ENAMELING & STAMPING CO.

Manufacturers of Enameled and Stainless St
Wares

Sales Offices: New York and Chicago.
Factory and General Offices
Terre Haute, Indiana.

October 30th, 1934.

ENAMELING & STAMPING MILL EMPLOYEES,
Union No. 19694, Terre Haute, Indiana.
Attention Mrs. Lois Conder, Secretary.

My dear Mrs. Conder: We are in receipt of yo
communication of October 22nd, in which you i
form us of interpretation of your organizatio
resolution adopted September 28, to-wit: "On a
after thirty days from date all members of Uni
No. 19694 shall be in good standing with said Uni
No. 19694 under penalty of loss of Union No. 196
association rights".

And also of your communication of October 2
in which you notify us of a request that you wi
the Indianapolis agreement of July 14 modified.

To this end, please be informed that we shall
glad to meet with your designated officials on F

day, November 23, 1934, in order to discuss the matter.

Yours very truly,

COLUMBIAN ENAMELING & STAMPING CO., INC.

(Sgd.) WERNER H. GRABBE,
General Manager.

WHG: AE.

Mrs. Lois Conder, Secretary,
610 North 14th Street,
Terre Haute, Indiana.

PETITIONER'S EXHIBIT No. 10

COLUMBIAN ENAMELING & STAMPING CO.

Manufacturers of Enameled and Stainless Steel Wares

Sales offices: New York and Chicago.
Factory and general offices: Terre Haute, Indiana.

Mrs. LOIS CONDER, FEBRUARY 8, 1935.
Corresponding Secretary,
Enameling & Stamping Mill
Employees Union No. 19694,
610 North 14th Street,
Terre Haute, Indiana.

My Dear Mrs. Conder: Receipt is acknowledged herewith of your letter of February 5, in which you inform me that it is the wish of your Union that your proposal of January 4, 1935, be taken to arbitration as provided for by Section 10 of the July 14, 1934, Indianapolis agreement.

Yesterday I informed the Scale Committee that its proposal is not subject to the arbitration provision of the agreement. You can readily see, by reading Paragraph 2 of Section 10 of the agree-

ment, that only disputes over subjects mentioned in the agreement may be submitted to arbitration. None of the proposals made is included under the Indianapolis agreement; hence, the proposal is not subject to arbitration. Our Corporation lawyers advise us that, "The Scale Committee is acting against the contract when they request that their proposal be submitted to arbitration—under the contract their proposal cannot be taken to arbitration." It is for this reason that I informed the Scale Committee yesterday as I did. Undoubtedly you, yourself, are aware of the impossibility of considering the proposal.

In my memorandum of January 21, 1935, I gave full and complete answer to each proposal, and therein the Company's position is most clearly stated. I do not believe that any of you will go out of your way to deliberately make trouble for the Company, which has, for so many years, given you employment.

If you wish to discuss the matter further, I shall be glad to meet with the members of the Scale Committee at any time subject to our mutual convenience.

Yours very truly,

COLUMBIAN ENAMELING & STAMPING CO., INC.

(Signed) WARNER H. GRABBE,
Vice President & General Manager.

WHG: AE.

P. S.—I am attaching hereto, for your information, a printed copy of a memorandum, dated February 8, 1935, which is being mailed to all factory employees. This printed copy has reference to the matter of arbitration.

W. H. G.

PETITIONER'S EXHIBIT No. 13

[Petitioner's exhibit No. 12 is the same as petitioner's exhibit No. 13 except that the addressee is Mrs. Lois Conder, Corresponding Secretary of the Union]

COLUMBIAN ENAMELING & STAMPING CO., INC.
TERRE HAUTE, INDIANA

February 19, 1935.

To All Factory Employees:

Recently we received a letter from the Enameling & Stamping Mill Employees Union No. 19694, dated February 9, 1935, and signed by Lois Conder, Corresponding Secretary, which states:

> 1. "It was moved unanimously by all members of Union 19694 present at a special meeting that the company deal directly with the scale committee of aforesaid union in matters concerning said union and not deal individually through the mail."
>
> 2. "As the union has a personnel of 476, we know exactly what is taking place."
>
> 3. "We do not want the information given to foremen and non-members. This is only to comply with section 7A (collective bargaining) of the National Recovery Act, prompted by our President."
>
> 4. "If this action is taken again this body will consider such action as discrimination and deal with it as such, regardless."

The management of the Columbian Enameling & Stamping Co., Inc., makes this reply to the above letter, to-wit:

(1) Misunderstanding and disorganization, which often causes deserving, efficient and loyal employees of a company to lose their jobs through

agitation and strikes which they do not instigate and with which they are not in sympathy, arises generally from individual misinformation and misinterpretation of situations affecting employees.

We feel that we have an obligation to keep all of our employees informed alike, whether or not they are members of Union 19694, and we shall continue to keep them equally informed, with respect to any and all plant negotiations, policies, conditions, and developments that concern their labor relations with this Company, either individually or collectively.

President Roosevelt, in his adjustment of the automobile labor situation, said (March 25, 1934):

> "The government makes it clear that it favors no particular union or particular form of employee organization or representation. The government's only duty is to secure absolute and uninfluenced freedom of choice without coercion, restraint or intimidation from any source."
>
> "Industry's obligations are clearly set forth and its responsibilities are established. Certainly it is not too much to expect employees to observe the same ethical and moral responsibilities, for only in this way can industry and its workers go forward with a united front in their assault on depression and gain for both the desired benefits of continually better times."

The words "from any source" were used advisedly by the President, who meant that not even agitators should influence, intimidate or coerce unorganized workers to join some particular organization involuntarily and against their will when, if left alone, they prefer by their own free choice to remain free of any group affiliation, and

to bargain independently and individually with their employer, which they have a lawful right to do as free born American Citizens.

(2) This Company has no knowledge of the extent of union membership among our employees, represented by Union 19694, hence it is not only beside the point, but is overstretching the point to allude to the figures of alleged membership. The membership may be 70 or it may be 700. That point is not pertinent nor consequential, for certainly when each employee receives our letters, why wouldn't the union committee and members be expected to "know exactly what takes place." That is what we want them to know.

Since our letters to employees have been in the nature of factual bulletins for the information of all of them, concerning the labor situation and policies prevailing in this plant, there has been no so-called "dealing through the mail" or "discrimination." There is nothing to conceal and the purpose of our letters has been to openly advise all employees fairly and equally in order that those belonging to the union, as well as those who do not, will "know exactly what takes place."

(3) Why should not the foremen and non-members of the union receive the same information that is open to its members? They have direct shop relationships and each should know the facts so that there will be no discrimination among them, and so that all employees may be given opportunity to freely and openly and intelligently discuss these matters among themselves without fear, favor, intimidation, coercion, or ignorance of the real facts.

We shall continue this practice, and will also see that our keymen, superintendents, foremen,

personnel supervisors, etc. are likewise kept informed, as well as the other factory employees, with respect to labor relations, shop rules, and regulations, production schedules, and related matters of company policy and management procedure.

(4) Since our several previous open letters, like this one, were sent to each factory employee purely as a Company statement pertaining to our plant policies of management, employment and production, we do not admit that there has been any discrimination as charged. This being our attitude in the situation, we do not understand the meaning of the implied threat to "deal with it as such, regardless."

The majority of the employees in this factory are sensible and hard working people, desirous of turning out a good day's work, and desirous of letting the management of the Company run the business. The Scale Committee during the past few months seems to have made up its mind that it wants to manage not only the Company, but all the employees working for it. This is an impossible situation, as every thinking man and woman in this organization can readily appreciate. To manage a factory as large as ours requires a knowledge that goes far beyond what any individual in the factory, or any group in the factory knows or could learn for many years to come. Before the Scale Committee or any other group of employees could manage this factory, they would have to have a very intimate daily knowledge of business conditions throughout the country, they would have to know banking and credit, accounting, costs, law, mechanical and chemical engineering, details of customers' businesses, competitive situation in the

industry, and in other competitive industries, like aluminum, glassware, crockery, etc., and any number of other things too numerous to mention in this letter.

If you will sit down and study the problem for only ten minutes, you will be astonished at the number of things that have to be known to manage a business. This factory could not run, nor could it exist without competent management. Wouldn't it be sensible to let competent management do those things that it is qualified to do? I am willing and available to discuss any factory problem with any one of you at any time that you may wish to see me. At any time that you have any grievance or complaint to make, having reference to Company affairs, I am not only willing and ready to listen to that complaint, but also to correct it if it is possible to do so, but please bear in mind that the Company can not, and will not turn the management of Company affairs over to any group of employees, whoever they may be. It is, perhaps, unfortunate that in business today, as in the past, and as it will be in the future, some of us have to work and some of us have to manage (and management is hard work), but that is the situation, and you can't get around it. I can at least say this much, that those of us who have jobs are darn lucky. It has always seemed to me to be a pleasure to have a job and be able to work. Any employee can make his job a pleasant one by showing a proper spirit in a wholehearted way. Any employee can make his job an unpleasant one by acting in an arbitrary and trouble making way.

What we all want is more pay. You want it, and I want it, and some of us want it badly. When

the Scale Committee, in its recent proposals that you are familiar with (because I sent them to you in a letter) asks to help make Company rules, investigate laxness, discharge any employee suspended from the union, etc., they are asking for something that is beside the point. The real point is higher wages. I repeat that what we all want is higher wages, and that, my friends, is something that none of us can get at this time. In order to pay higher wages, we have got to get more business into this plant. We have got to reduce costs, and we have got to get higher selling prices for our Enameled Ware. Competition makes our selling prices for us, and competition is not willing to raise prices; in fact, last week some of our competitors decided to make another price cut of 10%, which Columbian has to meet in order to get some business into this plant, so we are worse off than we were before. In fact, the Company is in a position where if competition does not raise prices, or where if we are compelled to meet continuing price cutting competition, it is going to be most difficult for this Company to even maintain present wage levels. You know that our business has fallen off recently. That is because our competitors have much lower prices than Columbian.

I am as anxious to raise wages as any of you are to get higher wages, and as I have told you before higher wages will be paid when the Company is able to pay them, and you will get the increase without any of you asking for it. Making a demand for increased wages is not going to get it for you, regardless of the way in which the demand might be made. Coercion, restraint or intimidation from any source won't get you higher wages. The Com-

pany simply can not pay increased wages at this time because it cannot afford to do so. The big majority of you are sensible thinking men and women and know that now and have known it.

It seems to me that Columbian's problems must be solved in a spirit of helpful cooperation, and that any activity which tends to inject misunderstandings and to confuse issues between employees and the Company, or disorganizes plant operations is harmful to its employees and harmful to the Company. For the reasons given above, we are mailing a copy of this letter to all factory employees.

Sincerely yours,

WERNER H. GRABBE,
Vice President and General Manager.

PETITIONER'S EXHIBIT NO. 14

COLUMBIAN ENAMELING & STAMPING CO.

Manufacturers of Enameled and Stainless Steel Wares

Sales offices: New York and Chicago.
Factory and general offices: Terre Haute, Indiana.

May 10, 1935.

Honorable Samuel E. Beecher,
Mayor of Terre Haute,
Terre Haute, Indiana.

Dear Sir: With reference to your letter of May 7, 1935, inviting us to meet with you and union representatives to seek a mutually satisfactory understanding, we wish to thank you for your very good and sincere intentions.

The strike, now existing about two months, was called for the purpose of forcing the Company to discharge non-union employees.

Such action would violate all principles of justice and legality. Any person has the moral and legal right to refuse to join a union, and can not morally or legally be deprived of the right to work because of such refusal. It is the duty of the law enforcing bodies, and the Courts of the City, County, and State, to enforce this right against intimidation, threats, and violence. The Company therefore absolutely refuses to make union membership a consideration in hiring, retention, or dismissal of employees.

Under the circumstances, a meeting of union and Company representatives would be entirely useless.

Any group of former employees, as individuals, but not as union representatives, may meet with the Company officials any time they wish.

This Company, from its inception, has operated as an open shop continuously for 33 years, maintaining good conditions and paying good wages (always as high as competition permitted). No union could ever have secured more advantageous conditions or wages. And no union can now secure advantages the Company will not voluntarily grant of its own accord. Union domination has now kept former employees off the payroll for two months and would continue to do so.

This Company will not now or ever operate under closed shop or union domination, but will always accord employees the best possible wages and conditions.

The strike is being maintained by the few through intimidation, coercion, threats, violence, and fear, which deprive the many of means of livelihood.

The Company exceedingly regrets the hardships caused by this ill advised strike and is doing what it can to alleviate suffering among former employees.

If the union calls off the strike, the factory will be reopened promptly without discrimination or reduction in wages, but only as open shop without union recognition or agreement.

Respectfully yours,

COLUMBIAN ENAMELING & STAMPING CO., INC.

CBG: AE

RESPONDENT'S EXHIBIT NO. 1

The Union agrees to cooperate with the Company in mutual aid for efficiency.

The foreman must report any one found lax in their duties to the committee. Committee to investigate the complaint and assist the management in correcting the complaint.

Company agrees to cooperate with the Union by posting Notice to the effect that Local Union #19694 represents a majority of the employees and will be considered the bargaining committee for all the employees of the plant.

In case of bad workmanship discovered before the final process of current operation—ware shall be returned to person responsible, if possible, for correction. Correction to be made without any additional cost—but in no case shall any employee be penalized for the bad work of another.

Employees shall not be responsible for—

Over or under fire.
Fish scales.
Bad Enamel.
Dirty or greasy ware.
Air pocket separation.
Acid soda deposits.

Committees or members shall not discuss grievances during working hours unless called on by the foreman.

The committee agrees to cooperate with the Company in enforcing all shop rules agreed to by the committee and Company.

In order to bring about more efficient workmanship and better cooperation the Company agrees to lay off any member of the union who becomes suspended.

If at the end of ninety days the present unrest has been eliminated and the production loss has been reduced to a normal minimum, the Company agrees to make the minimum wage rate forty cents for female and forty-five cents for male.

RESPONDENT'S EXHIBIT NO. 5

SEPTEMBER 18, 1934.

To Employees Belonging to Union No. 19694:

At the request of a Committee representing your organization, the Company agreed to institute the check-off system for the collection of dues payable to your organization under the following conditions:

1. Any member who may wish such a deduction made from his pay must sign a form (Pay Deduction Authorization) for each pay period.

2. Because of the clerical work involved, no authorization will be accepted by the Company unless properly signed and returned to the gatekeeper's office at least one week prior to the end of the pay period.

3. The organization to reimburse the Company for the cost of additional records and clerical work involved.

The Committee objected to the signing of "Pay Deduction Authorizations" for each pay period, requesting that the Company accept one signature for dues deductions for the period from date to July 14, 1935.

The Company informed the Committee that such a procedure is impractical and illegal. THE LAW PROVIDES THAT ASSIGNMENT OF WAGES FOR MORE THAN THIRTY DAYS IN ADVANCE IS ILLEGAL.

COLUMBIAN ENAMELING & STAMPING CO., INC.
(Sgd.) WERNER H. GRABBE,
General Manager.

RESPONDENT'S EXHIBIT NO. 6

ENAMELING & STAMPING MILL EMPLOYEES

UNION NO. 19694

TERRE HAUTE, INDIANA

October 1, 1934.

COLUMBIAN ENAMELING & STAMPING CO., INC.
MR. WILLIAM GORBY, Gen. Supt.

DEAR SIR: You are hereby informed as follows:

The members of Union #19694, in regular session, resolve: All members of Union #19694, on and after thirty days from date, shall be in good

financial standing with said Union #19694, under penalty of dis-association.

Signed,

ELSIE PAYTON,
OTIS A. COX,
M. G. HEUER,
MERLE BADDERS,
RUTH BADDERS,
C. H. PAYTON,
ED. G. MORIN.

RESPONDENT'S EXHIBIT NO. 7

OCTOBER 4, 1934.

ENAMELING & STAMPING MILL EMPLOYEES,
Union No. 19694, Terre Haute, Indiana.
Attention Otis A. Cox, Financial Secretary.

Gentlemen: We have received your notification of October 1, 1934, in which you inform us that members of your organization adopted the following resolution:

> "Resolved: All members of Union #19694, on and after thirty days from date, shall be in good financial standing with said Union #19694, under penalty of dis-association."

In a friendly spirit of cooperation, we ask that you inform us in writing, at your early convenience, as to the intent and meaning of your communication.

Do you intend it as a notification to the Company that you desire to terminate or modify the July 14, 1934, Indianapolis agreement, in accordance with Paragraph (5) thereof—

"When either party to this agreement desires to terminate or modify this agreement, he shall give written notice to the other party at least thirty days in advance of such termination."

And regarding the words of the resolution "under penalty of dis-association," do you mean that members of your organization whose dues are paid up will refuse to work with those whose dues are not paid up at the end of the thirty days, October 31, 1934?

We are sure that you appreciate that our wish to obtain from you a clear understanding of the subject matter is actuated entirely by a desire to avoid possible misunderstanding.

Yours very truly,

COLUMBIAN ENAMELING & STAMPING CO., INC.,

General Manager

WEG: AE

cc to Elsie Payton
M. G. Heuer
Merle Badders
Ed. G. Morin
Ruth Badders
C. H. Payton

RESPONDENT'S EXHIBIT NO. 8

COLUMBIAN ENAMELING & STAMPING CO.

Terre Haute, Indiana,
October 4, 1934.

To All Employees:

Because competitive prices are lower than our present cost, we faced very meager employment for at least the next several months. We therefore announced on October 1 to all our customers lower prices to meet this competition, in the hope of an

increased volume that would reduce the loss from lower selling prices. This action is in the nature of an experiment, the continuance of which will depend upon results. We therefore ask that everyone gives full cooperation in serving our mutual source of revenue (THE CUSTOMERS) promptly and with satisfactory merchandise. Also, that each individual make every effort to keep the cost of our product as low as possible. The Company's problem is your problem; towit, low cost and satisfactory merchandise—otherwise, losses for the Company and lack of employment for the employees. The Company is doing its full share by offering its product at less than cost. No sacrifice is being asked of the employees. The employees' share is faithful, conscientious work.

A feeling of unrest is not conducive to good work. To those of you who are not quite sure in your own minds regarding the Company's attitude on matters recently discussed in the factory, I have the following to say:

1. Whether employees belong to an organization or whether they do not belong to an organization makes no difference in the Company's attitude towards any employee. All employees will be treated equally. The Company's attitude is neutral and its actions impartial.

2. A check-off system for those Employees who belong to Union #19694, such as is requested by the Scale Committee of that organization, is illegal, and the Company will not knowingly violate a statute. The law provides that assignment of wages for more than thirty days in advance is illegal.

Let's do everything possible to get this organization running smoothly and pleasantly in the interest of yourself and the Company.

Yours for more business.

COLUMBIAN ENAMELING
& STAMPING CO., INC.,
WERNER H. GRABBE,
General Manager.

RESPONDENT'S EXHIBIT NO. 9

ENAMELING & STAMPING MILL EMPLOYEES UNION NO. 19694, TERRE HAUTE, INDIANA

TERRE HAUTE, IND.
October 22, 1934.

COLUMBIAN ENAMELING & STAMPING CO., INC.,
Mr. Werner Grabbe, Gen. Mgr.

Dear Sir: It is the decision of Union #19694 that the resolution of that body adopted September 28 and effective October 1 be interpreted as follows:

On and after thirty days from date all members of Union #19694 shall be in good standing with said Union #19694 under penalty of loss of Union #19694 association rights.

Fraternally,

(Sgd.) ELSIE PAYTON.
OTIS COX
M. G. HEUER *Chairman*
RUTH BADDERS
MERLE BADDERS
L. G. BROWN
C. H. PAYTON
E. G. MORIN

[SEAL]

RESPONDENT'S EXHIBIT NO. 11

ENAMELING & STAMPING MILL EMPLOYEES UNION
NO. 19694

TERRE HAUTE, INDIANA

TERRE HAUTE, IND.,
October 23, 1934

COLUMBIAN ENAMELING & STAMPING CO., INC.
Mr. WERNER GRABBE, Gen. Mgr.

DEAR SIR: Under the terms of our present agr
ment, as provided in Section 5, you are here
notified that it is the request of Union #19694 t
said agreement be modified. This letter is to se
as the thirty day notice agreed upon in our contr
with the company.

Fraternally,

(Sgd.) ELSIE PAYTON,
OTIS COX,
M. G. HEUER, *Chairman*
RUTH BADDERS,
MERLE BADDERS,
L. G. BROWN,
C. H. PAYTON,
E. G. MORIN.

[SEAL]

RESPONDENT'S EXHIBIT NO. 14

ENAMELING & STAMPING MILL EMPLOYEES UNION NO. 19694, TERRE HAUTE, INDIANA

610 N. 14th St.,
Terre Haute, Ind., Feb. 5, 1935.

Mr. WERNER GRABBE,
Gen. Mgr., Columbian Enam. & Stamp. Co.

Dear Sir: It is the wish of Union 19694, representing a majority of your employees, that the proposal of January 4 be taken to arbitration, as provided for by section 10 of our agreement.

We respectively ask that you meet with our representatives on or before Monday, Feb. 11.

Sincerely,

(Signed) LOIS CONDER,
Cor. Sec'y.

RESPONDENT'S EXHIBIT NO. 15

ENAMELING & STAMPING MILL EMPLOYEES UNION NO. 19694, TERRE HAUTE, INDIANA

610 N. 14th St.,
Terre Haute, Ind., February 9, 1935.

Mr. WERNER GRABBE,
Vice-Pres. & Gen. Mgr.,
Columbian Enameling
& Stamping Co., Inc.,
Terre Haute, Ind.

Dear Sir: It was moved unanimously by all members of Union 19694 present at a special meeting that the company deal directly with the scale committee of aforesaid union in matters concerning said union and not deal individually through the

mail. As the union has a personnel of 476, we know exactly what is taking place. We do not want the information given to foremen and non-members. This is only to comply with section 7A (collective bargaining) of the National Recovery Act, prompted by our President.

If this action is taken again this body will consider such action as discrimination and deal with it as such, regardless.

Sincerely,

(Signed) LOIS CONDER,
Cor. Sec'y.

RESPONDENT'S EXHIBIT No. 17

Terre Haute Star, Friday, June 7, 1935, page 11

ANNOUNCEMENT!

COLUMBIAN ENAMELING & STAMPING CO., INC.

The Company exceedingly regrets any hardships or community business losses caused by the strike existing since March 23, 1935. The Company has done what it could financially to alleviate acute suffering among its former employes.

The Company thanks those disinterested and generous individuals and groups who have so kindly offered their time for meetings intended to terminate the strike.

Union employes called the strike to force the Company to discharge nonunion employes—in other words, to adopt the closed shop.

The Company is willing to operate its plant, using former employes, without discrimination

against union members and without change in wages, but only as an open shop without union recognition or agreement. The above are the conditions under which the Company has operated continuously for 33 years to the general satisfaction of the employes. If the plant cannot be operated under these conditions, it will be closed indefinitely.

The plant will be reopened when the former employes advise the Company that they are ready to go back to work under above conditions.

COLUMBIAN ENAMELING & STAMPING CO., INC.

U. S. GOVERNMENT PRINTING OFFICE: 1938